

§ 1955.106

(1) The number of farms and acres that FmHA or its successor agency under Public Law 103-354 expects to acquire in inventory.

(2) The number of farms and acres other lenders expect to acquire in inventory.

(3) The number of farms and acres that FmHA or its successor agency under Public Law 103-354 currently has in inventory.

(4) The number of farms and acres other lenders currently have in inventory.

(5) The number of farms not included in paragraphs (c)(3) and (c)(4) of this section which are currently listed for sale.

(6) Published real estate values and trend reports such as those available from the Economic Research Service or professional appraisal organizations.

(d) *Highly erodible land.* If farm inventory property contains "highly erodible land," as determined by the SCS, the lease must include conservation practices specified by the SCS and approved by FmHA or its successor agency under Public Law 103-354 as a condition for leasing. Refer to §1955.137(d) of this subpart for implementation requirements.

[53 FR 35777, Sept. 14, 1988, as amended at 57 FR 19528, May 7, 1992; 58 FR 58649, Nov. 3, 1993; 62 FR 44399, Aug. 21, 1997]

§ 1955.106 Disposition of farm property.

(a) *Rights of previous owner and notification.* Before property which secured a Farm Credit Programs loan is taken into inventory, the FSA county official will advise the borrower-owner of Homestead Protection rights (see subpart S of part 1951 of this chapter.)

(b) *Racial, ethnic, and gender consideration.* The County Supervisor will make a special effort to insure that prospective purchasers, who traditionally would not be expected to apply for farm ownership loan assistance because of existing racial, ethnic, or gender prejudice, are informed of the availability of the Socially Disadvantaged Program. Emphasis will be placed on providing assistance to such socially disadvantaged applicants in accordance with the applicable sections of subpart A of part 1943 of this chapter.

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(c) *Nonprogram (NP) borrowers.* Nonprogram (NP) borrowers are not eligible for Homestead Protection provisions as set forth in subpart S of part 1951 of this chapter. When it is determined that all conditions of §1951.558(b) of subpart L of part 1951 of this chapter have been met, loans for unauthorized assistance will be treated as authorized loans and will be eligible for homestead protection.

[53 FR 35777, Sept. 14, 1988, as amended at 58 FR 58649, Nov. 3, 1993; 62 FR 44399, Aug. 21, 1997]

§ 1955.107 Sale of FSA property (CONACT).

FSA inventory property will be advertised for sale in accordance with the provisions of this subpart. If a request is received from a Federal or State agency for transfer of a property for conservation purposes, the advertisement should be conditional on that possibility. Real property will be managed in accordance with the provisions of subpart B of this part until sold.

(a) *Suitable Property.* Not later than 15 days from the date of acquisition, the Agency will advertise suitable property for sale. For properties currently under a lease, except leases to beginning farmers and ranchers under §1955.66(a)(2)(iii) of subpart B of this part, the property will be advertised for sale not later than 60 days after the lease expires or is terminated. There will be a preference for beginning farmers or ranchers. The advertisement will contain a provision to lease the property to a beginning farmer or rancher for up to 18 months should FSA credit assistance not be available at the time of sale. The first advertisement will not be required to contain the sales price but it should inform potential beginning farmer or rancher applicants that applications will be accepted pending completion of the advertisement process. When possible, the sale of suitable FSA property should be handled by county officials. Farm property will be advertised for sale by publishing, as a minimum, two weekly advertisements in at least two newspapers that are widely circulated in the area in which the farm is located. Consideration will be given to advertising inventory properties in major farm

publications. Either Form RD 1955-40 or Form RD 1955-41, "Notice of Sale," will be posted in a prominent place in the county. Maximum publicity should be given to the sale under guidance provided by §1955.146 of this subpart and care should be taken to spell out eligibility criteria. Tribal Councils or other recognized Indian governing bodies having jurisdiction over Indian reservations (see §1955.103 of this subpart) shall be responsible for notifying those parties in §1955.66(d)(2) of subpart B of this part.

(1) *Price.* Property will be advertised for sale for its appraised market value based on the condition of the property at the time it is made available for sale. The market value will be determined by an appraisal made in accordance with §761.7 of this title. Property contaminated with hazardous waste will be appraised "as improved" which will be used as the sale price for advertisement to beginning farmers or ranchers.

(2) *Selection of purchaser.* After homestead protection rights have expired, suitable farmland must be sold in the priority outlined in this paragraph. When farm inventory property is larger than family size, the property will be subdivided into suitable family size farms pursuant to §1955.140 of this subpart.

(i) *Sale to beginning farmers/ranchers.* Not later than 135 days from the date of acquisition, FSA will sell suitable farm property, with a priority given to applicants who are classified as beginning farmers or ranchers, as defined in §1955.103, as of the time of sale.

(ii) *Random selection.* The county official will first determine whether applicants meet the eligibility requirements of a beginning farmer or rancher. For applicants who are not determined to be beginning farmers or ranchers, they may request that the State Executive Director provide an expedited review and determination of whether the applicant is a beginning farmer or rancher for the purpose of acquiring inventory property. This review shall take place not later than 30 days after denial of the application. The State Executive Director's review decision shall be final and is not administratively appealable. When there is more than one

beginning farmer or rancher applicant, the Agency will select by lot by placing the names in a receptacle and drawing names sequentially. Drawn offers will be numbered and those drawn after the first drawn name will be held in suspense pending sale to the successful applicant. The random selection drawing will be open to the public, and applicants will be advised of the time and place.

(iii) *Notification of applicants not selected to purchase suitable farmland.* When the Agency selects an applicant to purchase suitable farmland, in accordance with this paragraph, all applicants not selected will be notified in writing that they were not selected. The outcome of the random selection by lot is not appealable if such selection is conducted in accordance with this subpart.

(3) *Credit sale procedure.* Subject to the availability of funds, credit sale to program applicants will be processed as follows:

(i) The interest rate charged by the Agency will be the lower of the interest rates in effect at the time of loan approval or closing.

(ii) The loan limits for the requested type of assistance are applicable to a credit sale to an eligible applicant.

(iii) Title clearance and loan closing for a credit sale and any subsequent loan to be closed simultaneously must be the same as for an initial loan except that:

(A) Form RD 1955-49, "Quitclaim Deed," or other form of nonwarranty deed approved by the Office of the General Counsel (OGC) will be used.

(B) The buyer will pay attorney's fees and title insurance costs, recording fees, and other customary fees unless they are included in a subsequent loan. A subsequent loan may not be made for the primary purpose of paying closing costs and fees.

(iv) Property sold on credit sale may not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, see Exhibit M of subpart G of part 1940 of this chapter. All prospective buyers will be notified in writing as a part of the property advertisement

of the presence of highly erodible land and wetlands on inventory property.

(b) *Surplus property and suitable property not sold to a beginning farmer or rancher.* Except where a lessee is exercising the option to purchase under the Homestead Protection provision of subpart S of part 1951 of this chapter, surplus property will be offered for public sale by sealed bid or auction within 15 days from the date of acquisition in accordance with §1955.147 or §1955.148. Suitable farm property which has been advertised for sale to a beginning farmer or rancher in accordance with paragraph (a) of this section, but has not sold within 135 days from the date of acquisition will be offered for public sale by sealed bid or auction to the highest bidder as provided in paragraph (b)(1) of this section. All prospective buyers will be notified in writing as part of the property advertisement of the presence of any highly erodible land, converted wetlands, floodplains, wetlands, or other special characteristics of the property that may limit its use or cause an easement to be placed on the property.

(1) *Advertising surplus property.* FSA will advertise surplus property for sale by sealed bid or auction within 15 days from the date of acquisition or, for those suitable properties not sold to beginning farmers or ranchers in accordance with this section, within 135 days of the date of acquisition.

(2) *Sale by sealed bid or auction.* Surplus real estate must be offered for public sale by sealed bid or auction and must be sold no later than 165 days from the date of acquisition to the highest bidder. Preference will be given to a cash offer which is at least *percent of the highest offer requiring credit. (*Refer to Exhibit B of RD Instruction 440.1 (available in any Agency office) for the current percentage.) Equally acceptable sealed bid offers will be decided by lot.

(3) *Negotiated sale.* If no acceptable bid is received through the sealed bid or auction process, the State Executive Director will sell surplus property at the maximum price obtainable without further public notice by negotiation with interested parties, including all previous bidders. The rates and terms offered for a credit sale through nego-

tiation will be within the limitations established in paragraph (b) (4) of this section. A sale made through negotiation will require a bid deposit of not less than 10 percent of the negotiated price in the form of a cashier's check, certified check, postal or bank money order, or bank draft payable to FSA. Preference will be given to a cash offer which is at least * percent of the highest offer requiring credit. [*Refer to Exhibit B of RD Instruction 440.1 (available in any Agency office) for the current percentage.] Equally acceptable offers will be decided by lot.

(4) *Rates and terms.* Subject to the availability of funds, rates and terms for Homestead Protection will be in accordance with subpart S of part 1951 of this chapter. Sales of suitable property offered to program eligible applicants will be on rates and terms provided in subpart A of part 1943 of this chapter. Surplus property and suitable property which has not been sold to program eligible applicants will be offered for cash or on ineligible terms in accordance with subpart J of part 1951 of this chapter. The State Executive Director will determine the loan terms for surplus property within these limitations. A credit sale made on ineligible terms will be closed at the interest rate in effect at the time the credit sale was approved. After extensive sales efforts where no acceptable offer has been received, the State Executive Director may request the Administrator to permit offering surplus property for sale on more favorable rates and terms; however, the terms may not be more favorable than those legally permissible for eligible borrowers. Surplus property will be offered for sale for cash or terms that will provide the best net return for the Government. The term of financing extended may not be longer than the period for which the property will serve as adequate security. All credit sales on ineligible terms will be identified as NP loans.

[62 FR 44399, Aug. 21, 1997, as amended at 64 FR 62569, Nov. 17, 1999; 68 FR 7700, Feb. 18, 2003]

§ 1955.108 Sale of (CONACT) property other than FSA property.

Program officials will immediately contact the National Office whenever